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Paper No. None

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OFFICE OF PETITIONS

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|------------------------------|---|--------------------------|
| In re Application of | : | |
| Victor R. Sanchez, Alberto | : | |
| Ceja, and Rigoberto Anguiano | : | |
| Application No. 09/753,171 | : | |
| Filed: December 29, 2000 | : | DECISION ON RENEWED |
| Attorney Docket Number: | : | PETITION UNDER 37 C.F.R. |
| CAS1PAU24R2 | : | \$1.147(A) |
| Title: METHODS FOR HANDLING | : | |
| MASA | : | |

This is in response to the renewed petition under 37 C.F.R. \$1.47(a), filed July 26, 2006.

A grantable petition under 37 C.F.R. \$1.47(a) requires:

- (1) the petition fee of \$200;
- (2) a surcharge of either \$65 or \$130 if the petition is not filed at the time of filing the application, as set forth in 37 C.F.R. § 1.16(e);
- (3) a statement of the last known address of the non-signing inventors;
- (4) either
 - (a) proof that a copy of the entire application (specification, claims, drawings, and the oath or declaration) was sent or given to the non-signing inventor for review and proof that the non-signing inventor refuses to join in the application or
 - b) proof that the non-signing inventor cannot be found or reached after diligent effort;
- (5) a declaration which complies with 37 C.F.R. §1.63.

The above-identified reissue application was filed on December 29, 2000, identifying Victor R. Sanchez, Alberto Ceja, and Rigoberto Anguiano as joint inventors. Messrs. Ceja and Sanchez have not executed the reissue declaration. A copy of the reissue declaration and a complete copy of the application were sent to each of these individuals, and neither has responded. As such, it has been determined that each has refused to join in the present reissue application, and consequently, each of these inventors is deemed to be unavailable.

The original petition was submitted on August 31, 2005, and was dismissed via the mailing of a decision on June 21, 2006, for failure to meet the fifth requirement of 37 C.F.R. §1.47(a).

37 C.F.R. §1.172 sets forth, in pertinent part:

(a) A reissue oath must be signed and sworn to or declaration made by the inventor or inventors except as otherwise provided (see §§ 1.42, 1.43, 1.47), and must be accompanied by the written consent of all assignees, if any, owning an undivided interest in the patent, but a reissue oath may be made and sworn to or declaration made by the assignee of the entire interest if the application does not seek to enlarge the scope of the claims of the original patent. All assignees consenting to the reissue must establish their ownership interest in the patent by filing in the reissue application a submission in accordance with the provisions of § 3.73(b) of this chapter.

MPEP §1412.04(II) sets forth, in pertinent part:

Where a reissue to correct inventorship also changes the claims to enlarge the scope of the patent claims, the signature of all the inventors is needed. However, if an inventor refuses to sign the reissue oath or declaration because he or she believes the change in inventorship (to be effected) is not correct, the reissue application can still be filed with a petition under 37 C.F.R. 1.47 without that inventor's signature **>provided the written consent of all owners/assignees as required by 37 C.F.R. 1.172(a) is also submitted. In the situation where a patent to inventors X and Y has no assignee and a reissue application is filed by inventor Y to delete the name of inventor X as an inventor and to broaden the patent. Inventor X refuses to sign the reissue oath or declaration and refuses to provide the consent as required by 37 C.F.R. 1.172(a). In this instance, a 37 C.F.R. 1.47 petition would not be appropriate to permit the filing of the reissue application since the consent requirement of 37 C.F.R. 1.172(a) for each owner/assignee is not met. Resort to the courts would be required to delete the name of inventor X as an inventor where X will not consent to the filing of a reissue application. As stated in the second paragraph of 35 U.S.C. 256, "[t]he court before which such matter is called in question may order correction of the patent on

notice and hearing of all parties concerned and the Director shall issue a certificate accordingly."

The decision on the original petition indicated that a review of the electronic file did not result in the location of executed assignment from these inventors.

With this renewed petition, Petitioner has indicated that an executed assignment was provided to the Office on December 29, 2000. The appropriate electronic documents have been reviewed, and it is noted that the electronic file does indeed contain evidence of the written consent of an assignee of the entire interest. The electronic file contains a statement under 37 C.F.R. §3.73(b) made by Casa Herrera, Inc., and an assignment from each of the three joint inventors to Machine Master, Inc. It has been asserted that this patent was purchased from Machine Masters' Trustee in Bankruptcy.

The requirements of §3.73(b) are waived to the extent that the requirement for a Reel & Frame listing or document copy for the Trustee in Bankruptcy conveyance to the present assignee is not **presently** required.

Prior to allowance of the present reissue application, the present assignee must file a fresh §3.73(b) certificate indicating a reel & frame number, or attached document copies, or a combination of the two that establishes a complete chain of title from the inventors through the current assignee.

As such, Petitioner has met each of the five requirements of 37 C.F.R. §1.47(a)

Therefore, the petition is **GRANTED** and this application is hereby accorded Rule §1.47(a) status.

As provided in 37 C.F.R. 1.47(a), this Office will forward notice of this application's filing to the non-signing inventors at the respective addresses given on the declaration. Notice of the filing of this application will also be published in the *Official Gazette*.

After the mailing of this decision, the Technology Center will be notified of the same.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3225. All other inquiries

concerning examination procedures or status of the application
should be directed to the Technology Center.

A handwritten signature in black ink, appearing to read "Paul Shanoski".

Paul Shanoski
Senior Attorney
Office of Petitions
United States Patent and Trademark Office



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Alberto Ceja
9528 E. Nan Street
Pico Rivera, CA 90660

In re Application of :
Victor R. Sanchez, Alberto Ceja, and :
Rigoberto Anguiano :
Application No. 09/753,171 : LETTER
Filed: December 29, 2000 :
Attorney Docket Number: CAS1PAU24R2 :
Title: METHODS FOR HANDLING MASA :

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Dear Mr. Ceja:

You are named a joint inventor in the above-identified United States patent application filed under the provisions of 35 U.S.C. 116 (United States Code) and 37 C.F.R 1.47(a), Rules of Practice in Patent Cases. Should a patent be granted on the application, you will be designated therein as a joint inventor.

As a named inventor you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 C.F.R 1.19) or make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent attorney or agent presenting written authorization from you. If you care to join the application, the attorney of record below would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 C.F.R. 1.63.

Telephone inquiries regarding this communication should be directed to the undersigned at (571) 272-3225. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to the Certification Division at (703) 308-9726 or 1-800-972-6382 (outside the Washington D.C. area).

cc: MYERS DAWES ANDRAS & SHERMAN, LLP
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In re Application of :
Victor R. Sanchez, Alberto Ceja, and :
Rigoberto Anguiano :
Application No. 09/753,171 : LETTER
Filed: December 29, 2000 :
Attorney Docket Number: CAS1PAU24R2 :
Title: METHODS FOR HANDLING MASA :

Dear Mr. Sanchez:

You are named a joint inventor in the above-identified United States patent application filed under the provisions of 35 U.S.C. 116 (United States Code) and 37 C.F.R 1.47(a), Rules of Practice in Patent Cases. Should a patent be granted on the application, you will be designated therein as a joint inventor.

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